

2. Moreover, Plaintiff sues on the basis of an alleged “Contract” with Defendants which it attaches as Exhibit 1 to its Complaint. What Plaintiff fails to advise the Court of is that the parties terminated their business relationship and settled all matters of controversy between themselves as a matter of law.

3. Attached to this Motion as Exhibit “A” is the Affidavit of Ronald C. Hodge In Support of Motion to Dismiss (“Affidavit of Mr. Hodge”), which sets forth the parties settlement agreement dated July 01, 2009 signed by the representatives of each party, including the Plaintiff for valuable consideration which was acknowledged by Plaintiff. See Exhibit “A” attached hereto and incorporated herein for all purposes.

4. At a minimum, the July 1, 2009 settlement agreement sets the ceiling on the amount in controversy between the parties; that is, two payments of \$9,302.50 for commissions due, for a total of only \$18,605.00, an amount well below the jurisdictional minimum of \$75,000.00. See the settlement agreement attached to the Affidavit of Mr. Hodge.

5. Therefore, given that the amount in controversy is so low (\$18,605.00), the Plaintiff’s damages do not meet or exceed the threshold sum of \$75,000.00 to establish diversity jurisdiction in order to bring a cause of action against the Defendants under 28 USC § 1332 (2006). As a result, under Rule 12(b)(1) of the Federal Rules of Civil Procedure there is no subject matter jurisdiction.

6. In addition, since the Plaintiff and Defendants have settled the amount in controversy between them by virtue of the above-referenced settlement agreement dated July 1, 2009, there cannot be any cause of action still viable for which Plaintiff could sue Defendants and hence, Plaintiff has failed to state a cause of action against Defendants upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

7. Finally, since a dismissal is appropriate pursuant to Rule 12(b)(1) or Rule 12(b)(6) of the Federal Rules of Civil Procedure the Court's supplemental jurisdiction over all of the state law claims alleged are precluded. Austral Oil Co., Inc. v. National Park Service, 982 F. Supp. 1238 (N.D. Tex. 1997). See also Nowak v. Ironworkers Local 6 Pension Fund, 81 F.3d 1182, 1187 (2nd Cir. 1996).

WHEREFORE, Defendants Apache Creek Properties, L. C. and Apache Creek Properties, L. C. d/b/a Dimension Millworks respectfully request that this Court dismiss Plaintiff's causes of action against Defendants as set forth above, and grant Defendants such other and further relief to which they have shown themselves entitled.

Respectfully submitted,

E. GARCIA LAW, PLLC
10500 Heritage Boulevard, Suite 107
San Antonio, Texas 78216-3631
Telephone: (210) 524-9002
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By: 
EDGAR GARCIA
State Bar No. 07632020

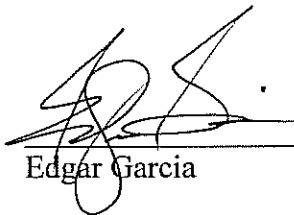
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that the below and foregoing document was sent via certified mail, return receipt requested to all counsel of record on this the 15th day of August, 2012, pursuant to the Federal Rules of Civil Procedure.

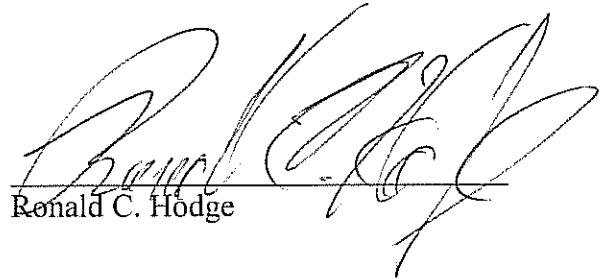
Ron S. Rainey
Jason L. Fowell
Tritico Rainey, P.L.L.C.
446 Heights Boulevard
Houston, Texas 77007
(713) 581-3360 (Fax)

ATTORNEYS FOR PLAINTFF



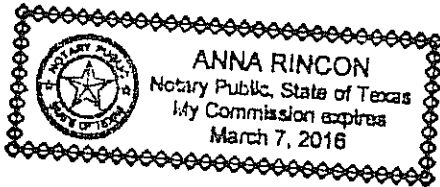
Edgar Garcia

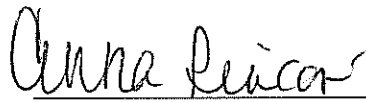
5. Moreover, the settlement agreement specifically states that it terminated the business relationship between the parties as well.
6. There has been no other business between the parties and hence, no further amounts are or could be due to the Plaintiff.
7. Further, affiant sayeth not."



Ronald C. Hodge

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 15th day of August 2012, to certify which witness my hand and seal of office.





Notary Public in and for the State of Texas

Apache Creek, LC dba
Dimension
M I L L W O R K S

July 01, 2009

This Agreement is made by and between Apache Creek LC d/b/a Dimension Millworks ("Dimension") and D & M Specialties ("D&M").

Upon receipt of the two payments of \$9,302.50 for commissions due; D&M releases all financial claims now and in the future such as; payments, commissions, or services from Dimension. In addition, D&M agrees there will no financial claims now or in the future against Dimension, Apache Creek LC, Ronnie Hodge, or any other employee or representative of Dimension.

The first payment will be hand delivered on July 1, 2009 and the second payment will be mailed on or about August 01, 2009 to D&M's designated location or address.

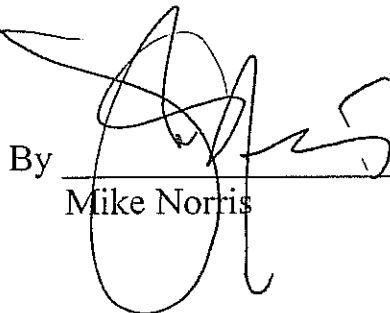
D&M agrees, on July 1, 2009; to release all samples and related materials located at the showroom location: 6170 East Chapman Road, Orange, CA 92869; to Dimension's designated contract trucking company for return to Dimension in San Antonio, Texas.


This agreement serves as the termination of the business relationship between Dimension and D&M.

July 01, 2009

Apache Creek LC d/b/a
Dimension Millworks

D & M Specialties, Inc.

By 
Mike Norris

By 
McKenzie Maxwell
July 1, 09

